

VZCZCXYZ0000
OO RUEHWEB

DE RUEHRL #1664/01 3471505
ZNY CCCCC ZZH
O 121505Z DEC 08
FM AMEMBASSY BERLIN
TO RUEKJCS/SECDEF WASHINGTON DC IMMEDIATE
RUEHC/SECSTATE WASHDC IMMEDIATE 2844
INFO RUEHZG/NATO EU COLLECTIVE PRIORITY
RHEHNSC/NSC WASHINGTON DC PRIORITY
RUCNDT/USMISSION USUN NEW YORK PRIORITY 0660
RHMFISS/COMSOCEUR VAIHINGEN GE PRIORITY
RHMFISS/CDRUSAREUR HEIDELBERG GE PRIORITY
RHMFISS/HQ USAFE RAMSTEIN AB GE PRIORITY
RHMFISS/HQ USEUCOM VAIHINGEN GE PRIORITY
RHEFDIA/DIA WASHINGTON DC PRIORITY
RUEKJCS/JOINT STAFF WASHINGTON DC PRIORITY

C O N F I D E N T I A L BERLIN 001664

SIPDIS

E.O. 12958: DECL: 12/11/2018
TAGS: [PREL](#) [MARR](#) [MOPS](#) [NATO](#) [EUN](#) [GM](#)
SUBJECT: GERMANY: POISED TO DEPLOY WITH ROBUST MANDATE IN
EU COUNTER-PIRACY MISSION

Classified By: CHARGE D'AFFAIRES JOHN KOENIG. REASONS: 1.4 (B) AND (D).

¶1. (C) SUMMARY: After months of interagency wrangling over legal issues, Germany is poised to contribute a frigate with a 200-man crew to the EU "Atalanta" counter-piracy operation on the basis of a robust parliamentary mandate that allows the Bundeswehr to carry out "opposed boardings" and to take piracy suspects into custody. A system has been set up for transferring suspects to Germany for prosecution, although the number of those transferred is likely to be limited to only those accused of directly affecting German interests. The plan is to turn over others captured to third countries or release them on the Somali coast. The parliamentary mandate for the Bundeswehr's participation in the EU "Atalanta" operation cannot be used to cover a possible future NATO counter-piracy mission. That mission will require its own separate mandate. Unfortunately, the Foreign Office, which is responsible for doing the preparatory work for such mandates, has almost completely ruled out seeking such a mandate during the upcoming election year. END SUMMARY.

CABINET APPROVES, NOW BEFORE THE BUNDESTAG

¶2. (SBU) The German cabinet on December 10 agreed on a proposed parliamentary mandate to cover the participation of the Bundeswehr in the EU "Atalanta" anti-piracy mission off the coast of Somalia. The proposed mandate has been forwarded to the Bundestag, which will use expedited procedures to review and vote on the proposed mandate by December 19, the last day the Bundestag is in session before the winter holidays. It is expected to pass with a comfortable majority.

ROBUST MANDATE, BUT ONLY AT SEA

¶3. (C) While the Germans see escorting World Food Program ships and deterring attacks in the waters off the coast of Somalia as their primary task, the proposed parliamentary mandate is fairly robust, allowing the Bundeswehr to do everything up to and including "opposed boardings" and capturing pirates. According to German MOD officials, the decision to conduct an "opposed boarding" -- which involves overcoming armed resistance in order to gain access to a vessel -- will rest with the EU "Atalanta" operational commander at the Northwood HQ, UK Rear Admiral Philip Jones. The German ship captain, on the other hand, will be able to conduct compliant and non-compliant boardings on his own authority.

¶4. (C) The Germans plan to dedicate one frigate to the EU operation (the "Karlsruhe"), with over 200 sailors on board, including two 10-man boarding teams consisting of highly trained German SEAL members (Kampfschwimmer). The troop ceiling for the mandate will be set at 1,400, so that other German naval ships which happen to be in the region under other operations (i.e., a Standing NATO Maritime Group or OEF's Task Force 150) can be brought under the EU flag temporarily to carry out counter-piracy missions as required.

As outlined in the EU Joint Action, the area of operation extends up to 500 nautical miles from the Somalian coast and its neighboring states, but as Foreign Office officials emphasized to us, the proposed parliamentary mandate does not authorize the pursuit of pirates on land.

DEALING WITH CAPTURED PIRATES

¶5. (C) One of the most difficult issues for the Germans in planning this mission has been how to handle captured pirates. Counter-piracy is considered to be a police action and therefore the normal domestic legal requirements for treatment of arrested persons apply. While the ship captain can decide on his own authority whom to take into custody, an ad hoc interagency committee in Berlin consisting of representatives from the justice, interior and defense ministries, as well as the Foreign Office, will decide whether that individual should be brought to Germany for prosecution, turned over to a third country or simply released on the Somalian coast.

SELECTIVE ABOUT WHOM TO PROSECUTE IN GERMANY

¶6. (C) According to the Foreign Office, only those who cause death or serious injury to a German citizen or otherwise adversely affect German interests will be brought to Germany and prosecuted. The Germans are likely to be very selective about whom they bring back to Germany for fear of creating perverse incentives for pirates to attack German interests in order to get access to Germany and seek political asylum. The authorities will also want to pursue only air-tight cases where the chances for an embarrassing release of a suspect by a German court are small.

PROCESS FOR TRANSFER TO GERMANY

¶7. (C) In those cases where Berlin decides to pursue prosecution, current plans are for the military to bring captured pirates to Djibouti or some other arranged rendezvous point in the region, where they will be turned over to German Federal Police for onward transport to Germany. To meet the German legal requirement that a person must be brought before a magistrate within 24 to 48 hours of arrest (depending on the exact time of arrest), the German authorities have determined that the period of time the person is held by the German military on board a ship does not count as an "arrest" (Festnahme) per se, but rather as a sort of "protective custody" (Gewahrsamnahme). The clock will only start running once the military surrenders the person to the German Federal Police at the rendezvous point. Currently, there are no plans to station German Federal Police in Djibouti or elsewhere in the region to receive captured pirates. The police will travel down from Germany as needed.

HANDLING THE OTHERS

¶8. (C) In cases where Germany has taken into custody pirates who have damaged the interests of other allies or partners, Germany will be prepared to turn the suspects over to those countries. German MOD officials also note that Yemen or Kenya may be in a position to prosecute captured pirates who otherwise do not fit in another category. In the event that there is no country able or willing to accept a captured pirate for prosecution, the German Navy, in coordination with the Foreign Office, will be prepared to release that person at a "safe" location on the Somalian coast. Germany supports the establishment of an international court to prosecute piracy suspects, but acknowledges that many countries are

against the idea because of the costs involved and the infringement on national sovereignty.

MANDATE NOT APPLICABLE TO FUTURE NATO MISSION

¶9. (C) The proposed parliamentary mandate now before the Bundestag will only authorize the Bundeswehr's participation in the EU "Atalanta" operation. It cannot be used to cover the possible future NATO counter-piracy mission now under discussion in Brussels. That mission would require a separate parliamentary mandate once the formal NATO decision has been taken and the operations plan approved.

FOREIGN OFFICE AGAINST SEPARATE NATO MANDATE

¶10. (C) In recent discussions, working level officials at the Foreign Office have almost completely ruled out the possibility of the government seeking such a mandate during the upcoming election year. They claim that seeking a third maritime mandate (in addition to the new EU mandate and the existing OEF one) to carry out piracy operations under NATO was not politically saleable in Germany -- nor practical. While acknowledging the usefulness of a separate NATO mission for those non-EU Allies who do not want to subordinate themselves to the EU (i.e., the U.S., Norway, Turkey, etc.), they argued that it would be unnecessarily duplicative for an EU member like Germany to carry out piracy operations under both organizations.

¶11. (C) In their view, if a German ship operating as part of a Standing NATO Maritime Group (SNMG) or under OEF's Task Force 150 is confronted with the need to carry out anti-piracy actions, it can be pulled out of the SNMG or TF-150 temporarily and perform the mission under the command of EU "Atalanta." This plan for switching ships back and forth between commands assumes, of course, that NATO and the

EU are operating in the same geographic area. It is also difficult to see how Germany could switch ships easily out of a SNMG or TF-150 when it is the force commander of these operations.

MOD MORE OPEN TO MANDATE, BUT AGAINST AD HOC MISSIONS

¶12. (C) Officials in the MOD -- including MOD Policy Planning Chief Ulrich Schlie -- have been more open to the idea of seeking a separate parliamentary mandate to cover German participation in a possible separate NATO counter-piracy mission. However, since the Foreign Office is the ministry responsible for preparing and seeking such mandates, its view on this matter will carry considerable weight. In any event, what the MOD wants to avoid is being asked to carry out counter-piracy missions on an ad hoc basis under NATO during the course of a deployment or exercise that otherwise has nothing to do with counter-piracy, as happened this past fall during the deployment of SNMG II.
Koenig